

1 BEFORE THE
2 ILLINOIS COMMERCE COMMISSION
3
4 IN THE MATTER OF:)
5 ILLINOIS COMMERCE COMMISSION)
6 On Its Own Motion,)
7) No. 03-0594
8 Implementation of the Federal)
9 Communications Commission's)
10 Triennial Review Order with)
11 respect to potential impairment)
12 determinations regarding unbundled)
13 local switching for enterprise)
14 market customers in specific)
15 markets.)
16 Chicago, Illinois
17 October 8th, 2003
18
19 Met pursuant to notice at 2:30 p.m.
20
21 BEFORE:
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23 MR. GLENNON DOLAN, Administrative Law Judge
24
25 APPEARANCES:
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27 CHERYL L. HAMILL
28 222 West Adams Street, Suite 1500
29 Chicago, Illinois 60606
30 Appearing for AT&T Communications;
31
32

1 APPEARANCES (Continued)

2 MR. MARK ORTLIEB and
3 MS. LOUISE SUNDERLAND
4 225 West Randolph Street, Suite 25D
5 Chicago, Illinois 60606
6 Appearing for SBC Illinois;

7 MR. DARRELL S. TOWNSLEY (Telephonically)
8 205 North Michigan Avenue, Suite 1100
9 Chicago, Illinois 60601
10 Appearing for WorldCom, Inc.,
11 d/b/a MCI;

12 MEYER CAPEL, PC, by
13 MR. DENNIS K. MUNCY (Telephonically)
14 306 West Church Street
15 Champaign, Illinois 61820
16 Appearing for Illinois Independent
17 Telephone Association;

18 ROWLAND & MOORE, by
19 MR. THOMAS H. ROWLAND and
20 MR. STEPHEN MOORE
21 77 West Wacker Drive, Suite 4600
22 Chicago, Illinois 60601
Appearing for Cimco Communications;

MR. MATTHEW L. HARVEY, MR. CARMEN L. FOSCO,
MR. MICHAEL L. LANNON, MR. SEAN R. BRADY and
MS. BRANDY D.B. BROWN
160 North LaSalle Street, Suite C-800
Chicago, Illinois 60601
Appearing for staff.

SULLIVAN REPORTING COMPANY, by
Barbara A. Perkovich, CSR

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Judge</u>
None.					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
None.		

1 JUDGE DOLAN: By the power and authority of the
2 Illinois Commerce Commission, I call Case
3 No. 03-0594, Illinois Commerce Commission, On Its
4 Own Motion, for the implementation of the Federal
5 Communications Triennial Review Order with
6 respect to potential impairment determinations
7 regarding unbundled local switching for
8 enterprise market customers in specific markets
9 to order.

10 Will the parties please state their
11 names and addresses for the record.

12 MR. FOSCO: Appearing on behalf of staff of the
13 Illinois Commerce Commission, Carmen L. Fosco,
14 Matthew L. Harvey, Michael J. Lannon, Sean R.
15 Brady, and Brandy D.B. brown, 160 North LaSalle
16 Street, Suite C-800, Chicago, Illinois 60601.

17 MR. ORTLIEB: Appearing on behalf of Illinois
18 Bell Telephone Company, Mark Ortlieb and Louise
19 Sunderland, 225 West Randolph, Suite 2500,
20 Chicago, Illinois 60606.

21 MR. MOORE: Appearing on behalf of Cimco
22 Communications, Inc., Stephen Moore and Thomas

1 Rowland of the law firm of Rowland and Moore, 77
2 West Wacker Drive, Suite 4600, Chicago, Illinois
3 60601.

4 MS. HAMILL: Appearing on behalf of AT&T
5 Communications of Illinois, Inc., Cheryl Hamill,
6 222 West Adams, Suite 2500, Chicago, Illinois
7 60606.

8 JUDGE DOLAN: Anybody else on the phone?

9 MR. NYCE: Appearing on behalf of the
10 Department of Defense and the Federal Executive
11 Agencies, Kevin Nyce, spelled N-y-c-e, Junior.
12 Regulatory Law Office, US Army Litigation Center,
13 901 North Stuart, spelled S-t-u-a-r-t, Street,
14 Suite 713, Arlington, Virginia 22203.

15 MR. TOWNSLEY: Appearing on behalf of WorldCom,
16 Inc., doing business as MCI, Darrell Townsley,
17 D-a-r-r-e-l-l, T-o-w-n-s-l-e-y, 205 North
18 Michigan Avenue, Suite 1100, Chicago, Illinois
19 60601.

20 MR. MUNCY: Dennis K. Muncy, 306 West Church
21 Street, Champaign, Illinois 61820, appearing for
22 the Illinois Independent Telephone Association.

1 JUDGE DOLAN: All right. No other appearances
2 for the record? All right, I guess I will start
3 with we have a bunch of petitions to intervene
4 and I just want to make sure that we have all the
5 parties listed.

6 So I have a petition to intervene from
7 AT&T, I have a petition from the Illinois
8 Independent Telephone Association, I have a
9 petition from Cimco Communications, from Sage
10 Telecom, from Talk america, from Z-Tel
11 Communications, incorporated, from MCI WorldCom
12 and that's all I have at this point.

13 Has anybody else have filed a petition
14 to intervene that I have not addressed? All of
15 those petitions to intervene will be granted.
16 And then we have a rebuttal notice of Cimco
17 Communications, which is -- or was filed timely,
18 so we will proceed with this docket.

19 A discussion has taken place concerning
20 the schedule for this, and I think all parties
21 are in agreement of the proposal from staff.

22 MR. FOSCO: Your Honor, would you like staff to

1 read that proposal into the record?

2 JUDGE DOLAN: Yes, please.

3 MR. FOSCO: The initiating order already
4 provides for any CLEC seeking a finding of
5 impairment to file their direct testimony by
6 October 20th. Everyone's agreed that all other
7 parties would file rebuttal testimony on November
8 3, 2003. All parties having any surrebuttal
9 testimony would file that on November 6th. We
10 would have hearings, starting on Friday, November
11 7. If needed those hearings would continue until
12 Monday, November 10th.

13 All parties would file simultaneous
14 initial briefs on November 17. The HEPO would be
15 issued on November 24th. All parties would then
16 file simultaneous briefs on exceptions by
17 December 1st, with an estimated date for issuance
18 of the post exceptions order on December 8th,
19 allowing the Commission to enter an order and if
20 needed file a petition with the FCC by the
21 deadline of December 31st.

22 JUDGE DOLAN: Okay. And all parties are in

1 agreement with this schedule?

2 MR. ORTLIEB: SBC, your Honor, does agree with
3 that schedule.

4 MR. MOORE: Cimco agrees with the schedule.

5 MR. TOWNSLEY: Yes, your Honor.

6 MS. HAMILL: Yes.

7 MR. FOSCO: I know we have a couple of things
8 to address, but one of the discussions that
9 occurred off the record was staff thought the
10 rebuttal notice that was filed possibly could use
11 clarification as to whether it applied just to
12 SBC or to other ILEC's within LATA 358.

13 I don't know if counsel is prepared to
14 clarify on the record today or if not maybe they
15 could file something shortly to just clarify that
16 it's only with respect to SBC or if it's not,
17 which carriers.

18 MR. ROWLAND: If you would like us to follow
19 this up with a letter, we could certainly do
20 that.

21 JUDGE DOLAN: I was actually going to say,
22 Mr. Moore, I hate to put you on the spot but

1 would you be prepared to reiterate what you said
2 off the record?

3 MR. ROWLAND: It doesn't quite address Carmen's
4 point, which was which customers, right now we
5 need to check with our client to make sure there
6 are no other carriers that they are surveying.
7 But your question was more toward the nature of
8 the request itself.

9 JUDGE DOLAN: Exactly.

10 MR. MOORE: Cimco is alleging that it will be
11 impaired for a set period of time during which it
12 needs to use that time to obtain its own
13 switching, train personnel to run it or to obtain
14 switching from another carrier, and then to make
15 the transition from SBC switches over to those
16 other switches, either Cimco's or some other
17 carriers.

18 Or all that failing, have it converted
19 back to resale. But in any event, whatever
20 occurs, that timing will take, I believe, longer
21 than 90 days from the date of the Commission
22 order and so Cimco is alleging that pursuant to

1 Paragraph 91 and 456 of the FCC's Triennial
2 Review Order that there will be operational and
3 economic factors which will impair Cimco for a
4 set period of time.

5 And we still need to confirm with our
6 client what that period of time will be. And at
7 the very latest we will be doing that in our
8 October 20th testimony. And I hope to have that
9 answer pretty quickly to SBC so we can talk about
10 this.

11 But we will be requesting that the
12 Commission then file a request waiver with the
13 FCC, that there is impairment for a set period of
14 time.

15 JUDGE DOLAN: Okay. So you should be in a
16 position, like you indicated, at least no later
17 than with your direct testimony you'll have an
18 idea of what that time frame should be?

19 MR. MOORE: That's right.

20 MR. FOSCO: Your Honor, going back to staff's
21 question, though, we don't care if it's in a
22 letter or a pleading, but if there are other

1 carriers that are subject to Cimco's petition
2 here, we think that they should be given notice,
3 somehow, to know that their rights are at stake
4 and they can have an opportunity to appear. So I
5 guess I would ask we set a date certain for them
6 to file a letter or a pleading, whatever it may
7 be.

8 MR. ROWLAND: We can get you that by tomorrow.

9 JUDGE DOLAN: And then just if you would,
10 obviously, serve me a copy of it, too, so then we
11 can put everybody on notice through -- well,
12 you'll put notice in the service list that's
13 provided with the case anyway.

14 And then the other discussion that took
15 place off of the record is that any discovery
16 responses will be within seven days of receipt of
17 any discovery. And then we needed to discuss the
18 protective orders, was that --

19 MS. HAMILL: I can give a little speech on the
20 record, if you would like.

21 JUDGE DOLAN: Sure.

22 MS. HAMILL: Your Honor, Cheryl Hamill on

1 behalf of AT&T. We are trying for the sake of
2 simplicity to use the same protective order in
3 all four of the impairment cases, 03-0593, 4, 5
4 and 6. And right now there are a couple of
5 drafts out there that parties are commenting on
6 and people are doing some checking with their
7 companies to see what's acceptable and what's
8 not.

9 We have committed to Examiner Wallace in
10 03-0595 and to Judge Gilbert in 03-0596 that we
11 would notify them by close of business on
12 Tuesday, October 14th, whether we have or have
13 not reached agreement on a protective order. And
14 we would be happy to notify your Honor as well.
15 Because if we haven't reached agreement we will
16 need some sort of ruling, and if we have then we
17 won't need to worry about it any longer.

18 JUDGE DOLAN: Okay, thank you. Is there any
19 other matters that we need to discuss then on the
20 record?

21 MR. HARVEY: Nothing from staff.

22 MS. HAMILL: Nothing, your Honor.

1 MR. MOORE: No.

2 JUDGE DOLAN: Okay, well, then we will enter

3 and continue this matter.

4 (Whereupon the above-entitled

5 matter was continued to November 7th,

6 2003 at 10:00 a.m.)

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